tion only to the proceeds of the policy, after the death of the insured, the same result has been reached as easily in their absence as in their presence. *Central Bank* v. *Hume*, 128 U. S. 195; *Robinson* v. *Accident Association*, 68 Fed. Rep. 825 (Cir. Ct., Mo.). The absence of any clearly understood principle is forcibly brought out by the decisions that the beneficiary named in mutual benefit certificates has no vested interest, though there would seem in this respect to be no sound distinction between these and the ordinary policies. *Supreme Conclave* v. *Capella*, 41 Fed. Rep. 1 (Cir. Ct., Mich.). The authorities are also about evenly divided as to whether, in the event of the beneficiary predeceasing the insured, the latter would not obtain full control over the disposition of the policy, which of course is inconsistent with the beneficiary having an absolute and vested interest.

A possible justification for the decisions giving the beneficiary a vested interest, might be found in that, strictly, the personal representatives of the insured in an action for a breach of the contract in the policy would only be entitled to nominal damages, and to prevent this failure of justice the beneficiary should be allowed to enforce a specific performance of the contract. While the proper remedy would be in equity, the courts might well allow him to proceed at law on the same grounds on which replevin has been held to lie against a fraudulent vendee. This line of reasoning derives some support from the fact that in England, where the beneficiary of a simple contract is not allowed to sue on the contract, the beneficiary of an insurance policy has been held, in a case where the English statute did not apply, to have no rights whatever, whether legal or equitable, in the contract made by the insurance company with the insured. *Cleaver* v. *Mutual Insurance Co.*, [1892] 1 Q. B. 147. While here, where the contrary doctrine generally prevails, the court in a recent case declared the rule that the beneficiary has a vested interest to be founded on "the well-known principle of the law of contracts." *N. Y. Insurance Co.* v. *Ireland*, 17 S. W. Rep. 617 (Tex., Sup. Ct.).

THE RIGHT TO CHANGE RIVER CHANNELS. — The case of *County of York* v. *Rolls*, Canadian Law Times, Feb. 1900, presents a state of facts seldom passed on. An unusual freshet changed the channel of a river, and washed away part of the land of the defendant, a riparian proprietor. Shortly after the flood subsided he filled in the places washed out, and thus turned the stream back to its original bed. It was held that he was entitled to do this at any time before a prescriptive right or a right by estoppel to keep the stream in the new channel was acquired against him. The only case which seems to present a similar point is that of *Woodbury* v. *Short*, 17 Vt. 387. There the action of a flood caused an alteration in the river channel, and it was said that the defendant might have returned the stream to the original bed had not his laches in this particular case been such as to restrain him on the theory of acquiescence. Both cases thus recognize the right of the owner as a sort of natural right, which may nevertheless be overcome. But what is sufficient to prevent the exercise of the right is hardly mentioned by the authorities. The doctrine of acquiescence which is referred to in *Woodbury* v. *Short*, *supra*, as the basis for denying the right to return the stream to the old channel, means nothing more than that as the defendant has neglected to use his right for a certain time he must be considered

as giving it up. But that doctrine seems too indefinite to be of any legal value. In the later case of *Ford* v. *Whitlock*, 27 Vt. 265, it was said that the true principle for this class of cases was to be found in an analogy to the rules of dedication of land to public uses. And this seems to have met the approval of some text-writers. Gould, Waters, 2d ed. p. 320. But it seems doubtful if the analogy is sound, for we can find no act of dedication in the mere neglect of the defendant to turn the stream back; nor is there a particular act of acceptance on the part of any individual or of the public. It would therefore be necessary to place this case on the footing of an implied dedication and acceptance. But here the rule is that when "the only evidence of the dedication of a way is its having been used as such by the public, such user, in order to constitute sufficient evidence of such dedication, must have continued for at least twenty years." Washburn, Easements, 4th ed. p. 220. And in this country it is not settled that user for a length of time shorter than the statutory period is a sufficient acceptance. The present case, where the defendant's neglect was of much shorter duration, cannot be decided on principles of dedication. It is also impossible to say that there is here an analogy to a license; for it is clear that the mere abstention from using is not in fact a license to other owners. Granted, however, a natural right to return the stream to the old bed, it may well be that the neglect to do so leads other proprietors to change their positions. And in such a case one may well find the basis for an estoppel *in pais* — a more satisfactory basis than that suggested by the authorities for stopping the landowner in the exercise of his right.

CUSTODY OF INFANTS. — The recent case of *In re Minors of Charles and Anna Luck*, Weekly Law Bulletin, Feb. 19, 1900, illustrates the modern attitude of the law as to the custody of young children. There Charles and Anna Luck before their marriage agreed that children of the union should be trained in the religious faith of the mother. After the mother's death the two infant children were taken by relatives of the father who entertained his religious belief. Four years later the father died. Applications for guardianship were then made by relatives of both the father and the mother, representing opposing religious beliefs. It was held that the relatives of the father should keep the children. Notwithstanding the agreement, the four-year period of training with the father's relatives had created attachments it was not wise to break. The case goes squarely upon the modern view that in questions of custody the welfare of the child is the paramount consideration.

Such, however, has not always been the attitude of the courts. An examination of the Roman law reveals that no such idea could be entertained. The child was then more nearly a species of property. 8 HARVARD LAW REVIEW, 39. The development of the English law, however, shows the gradual growth of the idea that justice might demand a consideration of the welfare of the child in granting its custody. There was both a chancery and a common law jurisdiction in these matters. *Queen* v. *Gynzall*, [1893] 2 Q. B. 232. From early times the former was exercised in accordance with the theory of the rights of the Crown over its subjects. Hence it often assumed the right to act as the welfare of the child demanded. But a harsher doctrine appeared in the common law court in proceedings on the writ of habeas corpus. Here it was said that